

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7121 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5: No
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AHMED I KATHAWALA

Versus

DIVISIONAL CONTROLLER

Appearance:

MR HK RATHOD for Petitioner

MR HARDIK C RAWAL for Respondent No. 1

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 19/03/98

ORAL JUDGEMENT

1. The petitioner was working on daily wages as Telephone Assistant by different orders for a period of less than one month. It appears that from 20.4.1977 till 6.2.1980, he had 27 such orders with some breaks. It is his case that after 6.2.1980, he had not been given the work and his services have been terminated by the employer without following procedure under section 25-F of the Industrial Disputes Act for retrenchment and he has neither been given notice, notice pay nor retrenchment compensation and the condition precedent has not been followed and, therefore, he is entitled to be reinstated with full back wages.

2. It is true that he has worked for more than 240

days in the preceding one year before 6.2.1980, but the question is whether the employer has terminated his services. Ex.16 to 18 show that the employer had continued to issue such orders for giving him work on the same terms and conditions on daily wages and on temporary basis for a period of one month. However, the petitioner has not reported for duty in spite of having been sent reminders. In fact, in his deposition para 2, he has stated that he has received letters, but he has not resumed duty on the ground that the appointment was temporary. It is, thus, clear that even though he had received several letters giving work to him, he had not reported for duty and, therefore, it was totally incorrect to say that the employer had terminated the service or retrenched him. Since the employer has not retrenched him or terminated his services, there is no question of following the provisions of section 25-F of the Industrial Disputes Act. It is very clear that the employee himself has abandoned the service. Therefore, the Labour Court was right in coming to the conclusion that this was not a case of retrenchment under section 25-F and provisions of section 2(oo) were not attracted.

3. There is no merit in this petition. Hence it is dismissed. Rule discharged.

mhs/-